# Re Wong Su Tiung, ex parte Yeo Hiap Seng Trading Sdn Bhd

HIGH COURT (KUCHING) – BANKRUPTCY NO 18 OF 1986
HAIDAR J
9 FEBRUARY 1989

*Bankruptcy – Bankruptcy notice – Validity of – Interest not quantified in monetary terms – Whether stating interest rate sufficient compliance with Bankruptcy Act 1967 – Bankruptcy Act 1967, s 3(1)(i) – Bankruptcy Rules 1969, Form 5*

In this case, a bankruptcy notice was filed by the petitioning creditor against the debtor. On the date of hearing of the bankruptcy matter, there was an issue as to whether the bankruptcy notice itself was valid as the interest was not quantified in monetary terms. Counsel for the petitioning creditor contended that so long as the rate of interest was stated in the notice, the debt was capable of being quantified and thus the notice had accordingly complied with s 3(1)(i) of the Bankruptcy Act 1967.

**Held,** dismissing the creditor's petition:

(1) If the interest in the bankruptcy notice is not quantified into the correct amount, then the debtor is in no position to know exactly what is being claimed to be due and payable by him within the seven-day period and it follows therefore that the amount claimed is ambiguous or unascertained in which event it is not imposed upon him to make inquiries as to the amount claimed.

(2) In Form 5 of the Bankruptcy Rules 1969, it could clearly be seen at line three thereof that a definite sum needs to be specified therein. It is thus clear that a liquidated sum must be stated in the bankruptcy notice and applying the strict rule of construction, the notice in this case cannot be deemed to fall within s 3(1)(i) of the Bankruptcy Act. The bankruptcy notice was a nullity ab initio.

**Case referred to**

1 *Low Mun* v *Chung Khiaw Bank Ltd* [1988] 1 MLJ 263 (folld)

**Legislation referred to**

Bankruptcy Act 1967 s 3(1)(i)
Bankruptcy Rules 1969 r 99, Form 5

*WT Voon* for the petitioning creditor.
*Abdul Latip* (Assistant Official Assignee) for the Official Assignee.
Debtor in person.

*Cur Adv Vult*

**Haidar J:** A bankruptcy notice (encl 4) dated 22 January 1986 was filed against Wong Su Tiung of lot 510, Jalan Padungan, Kuching (the debtor) by Yeo Hiap Seng Trading Sdn Bhd of 4th Mile Pending Road, Kuching (the creditor) in the High Court, Kuching.

The facts: The bankruptcy notice was served personally on the debtor on 5 February 1986. On 31 March 1986 the creditor filed a creditor's petition (encl 8) under r 99 of the Bankruptcy Rules 1969 (the Rules) that a receiving order may be made in respect of the estate of the debtor and the said creditor's petition was served on the debtor personally on 14 May 1986. On 16 June 1986 a receiving order was made against the debtor and the official assignee was constituted receiver of the estate of the debtor. The said receiving order was served on the debtor personally by the process server of the official assignee's department on 24 July 1986. The said receiving order was accordingly advertised in the newspaper, the *Sarawak Tribune*, on 26 July 1986 and also in the Sarawak government gazette. Subsequently, a public examination was heard by the senior assistant registrar on 9 January 1987 wherein, the debtor was ordered to pay $50 pm to the official assignee for benefit of his creditors, the first payment to commence on the first working day of February 1987 and thereafter on the first working day of each subsequent month. In addition the debtor is to surrender his Malaysian passport to the official assignee with liberty to apply. However, at the first creditors' meeting on 18 September 1986 at the official assignee's office it was unanimously resolved that the debtor be adjudged bankrupt and that the petitioning creditor to apply to the court to make the adjudication. Pursuant to the said resolution the creditor issued a notice dated 14 October 1988 for an order adjudging the debtor, bankrupt. The said notice was served on the debtor personally on 22 October 1988 and the said matter came for hearing on 1 December 1988. On the said date of hearing of the said matter the court intimated to the learned counsel for the petitioning creditor whether the bankruptcy notice itself was valid having regard to the decision of the Supreme Court in the case of *Low Mun* v *Chung Khiaw Bank Ltd.*[1] Learned counsel requested for time to study the said case and the court adjourned the hearing to 30 January 1989 for the learned counsel to make a submission.

On 30 January 1989 learned counsel sought to distinguish the Supreme Court case with this case. In this case, he said that the costs have been quantified and I think there is no quarrel about that. The real issue here is whether the interest element should be quantified in monetary terms. The learned counsel was of the view that it need not be so and sought to rely on the passage at para F of p 265 of the judgment. In that case the interest was not specified as compared to this case. If I understand Mr Voon correctly what he is saying is that so long as the interest is specified, ie the rate is spelt out in the bankruptcy notice, then the debt is capable of being quantified and hence the bankruptcy notice is valid and it has accordingly complied with s 3(1)(i) of the Bankruptcy Act 1967. It is best, I think, to examine closely the judgment of the Supreme Court to see whether there is substance in the reasoning of Mr Voon. In essence the Supreme Court stated as follows:

(a) the demand be limited only to the principal sum;
(b) both the interest and costs should have been left out altogether and when their amounts had been ascer-

tained, they could, before adjudication, be made subject of a separate bankruptcy notice;

(c) in any event, any balance of a judgment debt, including interest and costs not demanded in the notice, could subsequently be proved in bankruptcy to the official assignee under Part III of the Bankruptcy Act.

The Supreme Court at p 266 para D expressed its opinion as follows:

> Consequently, we are of the view that when you have the judgment in the usual form that we have here, a bankruptcy notice under the Act must require payment of *quantified sum or sums* alleged to be due according to the terms of the judgment as at the date of issue of bankruptcy notice. (Emphasis is mine)

In the later part of the same paragraph the Supreme Court went further to state:

> The amount must be quantified because the debtor is entitled to know from the bankruptcy notice exactly what is being claimed to be due on the whole judgment debt and payable by him within the seven-day period.

It would appear therefore that the use of the words 'amount' and 'quantified sum or sums' necessarily imply monetary terms and, in my view, to follow Mr Voon's reasoning that the rate of interest stated in the notice could be quantified into monetary terms would be stretching the reasoning a bit too far so as to impose a duty on the debtor to make inquiries as to the amount claimed and in this respect the Supreme Court in the same paragraph said:

> The duty is on the creditor to state the *correct amount* due and there is no obligation imposed on the debtor to make inquiries if the amount demanded is ambiguous or unascertained. (Emphasis is mine)

If the interest is not quantified into the *correct amount* then the debtor is in no position to know *exactly* what is being claimed to be due and payable by him within the seven-day period and it follows therefore that the amount claimed is ambiguous or unascertained in which event it is not imposed upon him to make inquiries. The Supreme Court at p 267 was very emphatic about the interest and costs having to be quantified when it said:

> Thus, on the date of issue of bankruptcy notice, it could not be said of the judgment on the interest and the costs that they constituted a judgment debt presently payable to the creditor, for they had not been *quantified into a liquidated sum*. (Emphasis is mine)

If we examine Form 5 in the Rules relating to bankruptcy notice it could be clearly seen at line three thereof that a definite sum needs to be specified therein. It is thus clear therefore that a liquidated sum must be stated in the bankruptcy notice and applying the rule of strict construction, the notice in this case cannot be deemed to fall within s 3(1)(i) of the Bankruptcy Act and following *Low Mun's* case,[1] the bankruptcy notice was a nullity ab initio and the debtor is entitled to succeed. Even though the debtor in this case has not challenged the validity of the bankruptcy notice, Mr Voon conceded that the court can in appropriate cases in the face of errors of law on the record before it, make the necessary orders as the court deems fit in order to do justice to the case.

In the circumstances and for the reasons set out by me, I have no hesitation in striking out the creditor's petition and accordingly do so with no order as to costs.

*Petition dismissed.*

Solicitors: *Yong & Co.*

Reported by *Ng Sheau Jiuan*

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## Datuk Eric Taylor v Lim Foo Yong & Sons Realty Sdn Bhd

HIGH COURT (KUALA LUMPUR) – CIVIL SUIT NO 433 OF 1977
ZAKARIA YATIM J
4 FEBRUARY 1989

*Contract – Damages – Assessment – Defendant undertaking to secure discharge of land – Defendant in breach of undertaking – Plaintiff unable to sell land – Loss of rental income from land – Plaintiff forced by financial difficulties to sell his house at a loss – Rental of alternative accommodation – Whether the losses may properly be claimed – Contracts Act 1950, s 74*

The plaintiff had entered into a contract whereby the plaintiff had agreed to sell and the defendant had agreed to buy some shares in a company at the price of $45,000. By the contract, the defendant also agreed and undertook to arrange for the discharge of the charge of the plaintiff's land in the mukim of Cheras ('the Cheras land') to a bank by payment to the bank of the sum of $125,755.41 and interest accrued up to the date of payment. The plaintiff performed his obligations under the contract but the defendant failed to obtain the discharge of the charge and in an action commenced by the plaintiff the High Court made an order for the discharge of the charge to be obtained by the defendants. The trial judge also made an order that the defendant do pay the plaintiff damages to be assessed for breach of contract. The defendant's appeal to the Federal Court was dismissed.

The plaintiff died on 8 August 1977 and his widow as the administratrix of his estate filed an application for an order, inter alia, that the damages be assessed pursuant to the order of the trial judge. She claimed general damages for loss of profits for inability to deal with the Cheras land and for embarrassment and suffering and also gave particulars of ascertained damages in the total sum of $181,500 as follows:

(a) the sum of $100,000 being the loss suffered as a result of the forced sale of the plaintiff's matrimonial house at Kenny Hill ('the Kenny Hill house');